

BEFORE THE POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

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Annual Compliance Report, 2014

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Docket No. ACR2014

**SURREPLY COMMENTS OF PITNEY BOWES INC.**

Pitney Bowes Inc. (Pitney Bowes) respectfully submits these surreply comments in response to the reply comments filed by the American Postal Workers Union (APWU) opposing the Metered Single-piece Letters rate (meter rate).<sup>1</sup>

APWU's reply comments argue that approval of the meter rate is foreclosed by the recent decision of the U.S. Court of Appeals for the District of Columbia Circuit in *United States Postal Service v. Postal Regulatory Commission*, 717 F.3d 209 (D.C. Cir. 2013)(workshare delinking case). APWU misreads the D.C. Circuit ruling in the workshare delinking case.

The issue in that case was whether the workshare limitations of 39 U.S.C. § 3622(e) applied to inter- as well as intra-product costs avoided. The Postal Service argued that the workshare limitations did not apply between First-Class Mail Single-Piece Letters and First-Class Mail Presort Letters because they were different products. The court rejected that position and agreed with the Commission that the statute did not limit the application of 39 U.S.C. § 3622(e) to workshare discounts within the same product.<sup>2</sup> No party argued that the discounts offered to presort letters were not a "workshare discount" as defined by 39 U.S.C. § 3622(e)(1).

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<sup>1</sup> See Reply Comments of American Postal Workers Union, AFL-CIO (Feb. 13, 2015)(APWU Reply Comments).

<sup>2</sup> 717 F.3d at 210.

APWU's appeal to the workshare delinking case is based on its mistaken contention that the meter rate is a workshare discount. This is the very same argument that the Commission considered and rejected in Docket No. R2013-10.<sup>3</sup> In Order No. 1890 the Commission stated:

The APWU Motion is based on the assumption that the proposed rates for metered and stamped letters establish a workshare discount that is subject to the requirements of 39 U.S.C. § 3622(e). However, before applying section 3622(e) to the proposed rates for metered and stamped letters, the Commission must find: (1) that the proposed rates involve a workshare activity described in 39 U.S.C. § 3622(e)(1); and (2) that there is a worksharing relationship between metered and stamped letters. The APWU Motion provides no support for the contention that the proposed rates establish a workshare discount “for the presorting, prebarcoding, handling or transportation of mail” within the meaning of 39 U.S.C. § 3622(e)(1). It does not argue that metered and stamped letters have similar demand characteristics because they target the same market or that the two categories cost the Postal Service different amounts to handle and deliver because of differing amounts of preparation that the mailer has elected to do, as would be required to establish that there is a worksharing relationship between the two categories.<sup>4</sup>

The APWU reply comments make no attempt to show how a pricing incentive to encourage small and medium-sized business mailers to use more efficient payment evidencing channels (e.g., postage meters, kiosks, PC Postage, permit, and on-line stamp sales) is covered by the statutory definition of the term “workshare discount.” 39 U.S.C. § 3622(e)(1). APWU simply assumes that the meter rate is a workshare discount and argues that approval of the meter rate would render 39 U.S.C. § 3622(e) “meaningless” and a “dead letter.” APWU Reply Comments at 2-3. These conclusory allegations are insufficient to show that the meter rate is a workshare discount.

Under the Postal Enhancement and Accountability Act (PAEA) the term “workshare discount” is narrowly defined as “rate discounts provided to mailers for the presorting,

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<sup>3</sup> See Dkt. No. R2013-10, Motion of the American Postal Workers Union, AFL-CIO For Acceptance of its Initial Comments and to Establish a Schedule to Consider the Use of a New Separate Metered Mail Price in Setting Workshare Discounts for First-Class Mail (Oct. 21, 2013).

<sup>4</sup> Dkt. No. R2013-10, Order No. 1890, Order on Price Adjustments for Market Dominant Products and Related Mail Classification Changes (Nov. 21, 2013) at 49 (citations omitted).

prebarcoding, handling or transportation of mail, as further defined by the Postal Regulatory Commission.” 39 U.S.C. § 3622(e)(1). The Commission correctly concluded that the meter rate is not a workshare discount because it is not a discount for presorting, prebarcoding, handling or transportation. The meter rate is also not a discount for any activity that the Commission has deemed “integral” to presorting, prebarcoding, handling, or transportation (e.g., address hygiene is deemed integral to pre-barcoding, mail volume density is deemed integral to presorting).<sup>5</sup> This is consistent with the Commission’s long-standing view that the costs associated with different sales and payment evidencing channels are not recognized as worksharing costs.<sup>6</sup>

Accordingly, APWU’s reliance on the workshare delinking case is misplaced. The meter rate is not a workshare discount; thus, there is no basis to consider whether the meter rate complies with the workshare limitations in 39 U.S.C. § 3622(e).

As discussed in Pitney Bowes previous comments, establishing a separate meter rate to encourage small and medium-sized businesses to increase mail volumes and reduce costs is an appropriate use of the Postal Service’s pricing flexibility and is consistent with Commission precedent in support of nonworkshare, policy-based pricing differentials that support the operational efficiency of the Postal Service.<sup>7</sup>

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<sup>5</sup> See Dkt. No. RM2009-3, Order No. 536 (Sept. 14, 2010) at 9.

<sup>6</sup> See Dkt. No. R2006-1, Op. and Recommended Decision (Feb. 27, 2007), ¶¶ 5251-54(citing Dkt. No. R2001-1).

<sup>7</sup> See Initial Comments of Pitney Bowes Inc. (Feb. 4, 2015) at 4-5; Reply Comments of Pitney Bowes Inc. (Feb. 13, 2015) at 2-6.

For the reasons cited above and in its previous comments, Pitney Bowes respectfully urges the Commission to affirm its position that the meter rate is a lawful and appropriate exercise of the Postal Service's pricing flexibility.

Respectfully submitted:

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